IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-08-2006

C O R A M

THE HONOURABLE Mrs.JUSTICE PRABHA SRIDEVAN

Writ Petition No. 25110 of 2006
& M.P.Nos.1 and 2 of 2006

J.Gracelin Vinil ... Petitioner

Vs.

1. Christian Medical College, Vellore
   Rep by the Registrar
   Christian Medical College,
   Vellore - 632 002, Tamil Nadu.

2. Tamil Nadu Dr.MGR Medical University
   Rep. by the Registrar
   Tamil Nadu Dr.MGR Medical University,
   No.69, Anna Salai,
   Guindy, Chennai - 600 032,
   Tamil Nadu.

3. The State of Tamil Nadu
   Rep. by the Secretary to Government
   Education Department,
   Fort St. George,
   Chennai - 600 009. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the first respondent to admit the petitioner, who is a minority candidate from the State of Tamil Nadu, pursuant to his marks obtained in the entrance examination conducted by the First Respondent on 26 May 2006 to the MBBS Degree Course for the Academic Year 2006-07.

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For Petitioner : Mr.Vinith Subramaniam for
M/s.Gladys Daniel

For Respondents : Mr.Krishna Srinivasan for
M/s. Ramasubramaniam Associates for R1
Mr.AL.Gandhimathi for R2
Mr.M.Sekar, Spl. GP (E) for R3

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O R D E R

The petitioner applied to the first respondent college for admission into the MBBS Degree Course. He was not admitted and according to him only 11 candidates from Tamil Nadu were called for the Interview and of these 4 were reserved for staff quota and the petitioner being one of the 4 remaining minority candidates, he is entitled to be admitted and therefore, writ of mandamus was sought for.

2. The first respondent entered appearance and the matter has been argued.

3. The learned counsel for the petitioner pointed out to the prospectus and submitted that out of 50 seats which are allotted for minority candidates, 10 seats are reserved for states which are called socially and educationally backward states and the said reservation is not permissible as per the Judgment in (2002) 8 SCC 481, (*T.M.A.PAI FOUNDATION v. STATE OF KARNATAKA*) and (2005) 6 SCC 537 (*P.A.INAMDAR v. STATE OF MAHARASHTRA*) case.

4. The learned counsel also submitted that when clause 5(b) of the Basis of Admission declares that the remaining seats will be available for christian students on merit from all over India, it was not open to the first respondent to carve out 6 seats from out of those 50 seats for admission to the children to the children of staff members. The learned counsel pointed out to Paragraph 6 in the prospectus under the caption Basis of Admission. According to the learned counsel, if this is correctly read can only be construed to mean that these 6 seats reserved for children of staff members would be identified from out of 10 seats, which are allocated on All India Merit and the admission could only be on the basis of merit and merit only. According to the learned counsel, all these conditions in the prospectus were violated by the first respondent themselves. The learned counsel also pointed out to the proceedings of the Permanent Committee, dated 10.06.2006, where the procedure adopted for reserving 6 seats for admission of children of staff members was not approved of.

5. On the side of the respondent, the learned counsel submitted that the first respondent institution has enjoyed an impeccable reputation in the manner in which it has been admitted students, trained them and educated them and the alumni of the first respondent have grown in stature to be the leaders in the society. Even the Supreme Court has recognised the total autonomy that the first respondent, two other institutions has enjoyed as regards their admission process. The learned counsel submitted that it has been the practice of the first respondent for several years now to identify socially and educationally backward states as per the indices given

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by the Government of India and to admit 10 students from those states.

6. The learned counsel for the respondent admitted that right from the inception, the first respondent has been a national level institution and has never restricted itself to one state, but it has selected students from all over the country purely on merit. The learned counsel also submitted that being a unaided private minority institution, it was not bound to reserve any seat for Scheduled Caste and Scheduled Tribe category and yet 2 seats out of 60 seats are reserved for them. The learned counsel further submits that the total process is transparent and no fault can be laid at the door of the first respondent. The learned counsel also submitted that the petitioner is Ranked 74 and does not fall within the zone of reckoning. 34 students were admitted and there are 40 students above him, who are in the waiting list and therefore, even if one seat has to be declared as vacant, it will not be the petitioner who is entitled to be admitted, but the student who ranks immediately next, who is Sl.No.35.

7.The relevant clauses in the Basis of Admission are as follows :

> *" 3. The final distribution of seats will be as follows :*
>
> *Open All India Merit 10*
> *Christian Minority - up to 50*
>
> *4. Open All India Merit : (Total 10)*
>
> *(i) One candidate will be selected by the Government of India (separate request for obtaining prescribed applications are to be addressed to the authorities as indicated in Annexure - I of the bulletin).*
>
> *(ii) Twenty percent (2 seats) of the open competition seats shall be reserved for candidates belonging to Scheduled Castes / Tribes (SC/ST). The candidates belonging to SC/ST should indicate this on the application form and a photocopy of the certificate of proof issued by the Dy. Tahsildar or the District Magistrate MUST be enclosed. The original of the certificate is required at the time of interview.*
>
> *(iii) The rest shall be on open merit.*

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5. Minority Candidates (upto 50)

a. Up to 10 seats will be reserved for christian candidates from socially (health parameters) and educationally backward states who are domiciled in the state and have undergone three of the last four years of their secondary education in that state. The states, which come under this category, will be determined from time to time based on the health and development indices published by the Government of India. For this year's selection, the states shall be – Bihar, Chattisgarh, Jharkand, MP, Orissa, UP & the North-eastern states. Candidates will be selected by merit.

b. The remaining seats will be available for christian students on merit from all over India.

c ...

6. There is no reservation for NRI's; they will be considered under All India Open Merit. However, up to 6 seats will be reserved for admission of children of eligible members of staff of CMC, Vellore (Confirmed staff with 10 years of continuous service or retired or died in service after 10 years of continuous service). These seats will be available on merit for children of both minority and non-minority staff."

8. The Judgment in (2002) 8 SCC 481, (*T.M.A.PAI FOUNDATION v. STATE OF KARNATAKA*), (2005) 6 SCC 537 (*P.A.INAMDAR v. STATE OF MAHARASHTRA*) and (2003) 6 SCC 697 (*ISLAMIC ACADEMY OF EDUCATION v. STATE OF KARNATAKA*) has been referred to. In fact, both the counsels referred to these paragraphs to support their cases which is extracted as below:

" 153. We would, however, like to clarify one important aspect at this state. The aided linguistic minority education institution is given the right to admit students belonging to linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated. If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the state in which the institution is located have to be necessarily admitted

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in a large measure because they constitute the linguistic minority group as far as the State is concerned. In other words, the predominance of linguistic students hailing from the State in which the minority educational institution is established should be present. The management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining State in which they are in a majority, under the facade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission by harmoniously construing Articles 30(1) and 29(1), which we have done above, may be distorted. (vide T.M.A.Pai Foundation case)

101. In this background arises the complex question of transborder operation of Article 10(1). T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 has clearly ruled in favour of the State (or a province) being the unit for the purpose of deciding minority. By this declaration of law, certain consequences follow. First, every community in India becomes a minority because in one or the other State of the country it will be in minority – linguistic or religious. What would happen if a minority belonging to a particular State establishes an educational institution in that State and administers it but for the benefit of members belonging to that minority domiciled in the neighbouring State where that community is in majority? Would it not be a fraud on the Constitution? In St. Stephen's College v. University of Delhi, (1992) 1 SCC 558 Their Lordships had ruled that Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and "no ill-fit or camouflaged institution should get away with the constitutional protection" (SCC p. 587, para 28). The question need not detain us for long as it stands answered in no uncertain terms in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481. Emphasising the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1), it is necessary that the objective of establishing the institution was not defeated.

" If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the

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State in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that State is concerned. In other words, the predominance of linguistic minority students hailing from the State in which the minority educational institution is established should be present. The management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining State in which they are in a majority, under the facade of the protection given under Article 30(1)." (SCC p. 585, para 153)

The same principle applies to religious minority. If any other view was to be taken, the very objective of conferring the preferential right of admission by harmoniously construing Articles 30(1) and 29(2), may be distorted.

102. It necessarily follows from the law laid down in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 that to establish a minority institution the institution must primarily cater to the requirements of that minority of that State else its character of minority institution is lost. However, to borrow the words of Chief Justice S.R.Das in Kerala Education Bill a "sprinkling" of that minority from the other State on the same footing as a sprinkling of non-minority students, would be permissible and would not deprive the institution of its essential character of being a minority institution determined by reference to that State as a unit. (vide P.A.Inamdar Case)"

In (2003) 6 SCC 697 (*ISLAMIC ACADEMY OF EDUCATION v. STATE OF KARNATAKA*) case, paragraph 17 refers to the first respondent college.

" 17. At this juncture it is brought to our notice that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but

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in addition they have some special features which require that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical College, Vellore, St.John's Hospital, Islamic Academy of Education etc. The claim of these institutions was disputed. However, we do not think it necessary to go into those questions. We leave it open to the institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out herein after."

9. The permanent committee has commented upon the reservation made for staff members with dis-approval.

10. The petitioner has obtained an order of stay with regard to the admission under this category on the ground that this has been the past procedure. It is clear from the extract of the Judgement in (2005) 6 SCC 537 (*P.A.INAMDAR v. STATE OF MAHARASHTRA*) that the first respondent has had its own admission procedure, claiming that it is fair and transparent. In these circumstances, the responsibility is even heavier on the first respondent to make sure that there is no flaw in its process of admission.

11. In this case, it is pointed out that admission of students from the North-eastern state, where the christians are the majority cannot be accommodated under the minority category, but only under the open category as per the paragraphs extracted above. It is also pointed out that when as per clause 5(b) of the prospectus, 50 seats are reserved for christian students alone, to carve out 6 seats from that for children of the staff members who may belong to minority or non-minority, would be a abuse of the protection granted under Article 30(1).

12. At this juncture, the learned counsel for the respondent on instructions from the Registrar of the first respondent submitted that they would resolve this dispute by promising the petitioner a seat in this academic year if there is drop out by any student or a seat in the next academic year, provided he goes through the admission process. While making this promise, the learned counsel for the respondent also expressed his reservations, since there are other students above the petitioner in the order of merit. In similar circumstances, the learned Single Judge of this Court in (*Dobson Dominique v. The State of Tamil Nadu)*, 2000 (3) L.W.121, has held as follows :

" The other candidates who are above the petitioner at the national level have not chosen to come and challenge their non-selection. It is

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> quite probable that the other candidates would have been selected in other professional courses or are not interested in the selection at all. In such an event, to direct the Selection Committee to conduct a fresh selection will be unnecessary. The Supreme Court in *State of Orissa and others v. Pragnaparamitha Samanatha*, 1996 (7) SCC 106, held that it is only those who are diligent and approach the Court in time, who can be given such relief. "

13. In view of this assurance, the merits of the matter are not gone into. It is also made clear this case will not be cited as precedent by other students.

The writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also dismissed.

tsvn

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Regbistrar,
Christian Medical College,
Vellore.

2.The Registrar
Tamil Nadu Dr.MGR Medical University
No.69, Anna Salai,
Guindy, Chennai - 600 032,
Tamil Nadu.

3. The Secretary to Government
Education Department,
State of Tamil Nadu
Fort St. George, Chennai - 600 009.
1 cc to M/s.S.Ramasubramaniam Associates, Advocates on payment of charges SR.38425
1 cc to M/s.Gladys Daniel, Advocate on payment of charges,SR.38208
1 cc to the Government Pleader, SR.38433

bv (co)

dv/31.8.06 W.P.No.25110 of 2006

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